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BEFORE THE ARIZONA CORPORATION CCCOMMISSIONERS

Arizona Corporation Commission

DOCKETED

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MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

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IN THE MATTER OF THE APPLICATION OF
KINGS RANCH UNIT II TREATMENT PLANT
FOR APPROVAL TO SELL ITS ASSETS AND TO
CANCEL ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY.

DOCKET NO. SW-02573A-07-0650

IN THE MATTER OF THE ESTABLISHMENT OF
THE KINGS RANCH UNIT II DOMESTIC
WASTEWATER IMPROVEMENT DISTRICT.

DOCKET NO. SW-20492A-06-0766

DECISION NO. **70306****OPINION AND ORDER**

DATE OF HEARING:

March 13, 2008

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

APPEARANCES:

Philip and Jeane Albins, on behalf of Kings Ranch Unit II Treatment Plant;

Virginia Gray, on behalf of Kings Ranch Unit II Domestic Wastewater Improvement District;

Robin Mitchell, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On December 8, 2006, Docket No. SW-20492A-06-0766 ("Improvement District Case") was opened by the Arizona Corporation Commission ("Commission") *In the Matter of the Establishment of the Kings Ranch Unit II Domestic Wastewater Improvement District.*

On December 13, 2006, the Yavapai County Board of Supervisors filed an Order of Establishment for the Kings Ranch Unit II Domestic Wastewater Improvement District ("District"), located near Black Canyon City, in Yavapai County, Arizona.

On November 6, 2007, Kings Ranch Unit II Treatment Plant ("Kings Ranch" or "Company") filed with the Commission in Docket No. SW-02573A-07-0650 ("Asset Sale Case") an application

1 for approval to sell its assets to the District and to cancel its Certificate of Convenience and Necessity
2 ("CC&N") to provide wastewater treatment service.

3 On December 13, 2007, Kings Ranch filed an Affidavit of Publication in the Asset Sale Case.

4 On December 14, 2007, the Commission's Utilities Division ("Staff") filed a Sufficiency
5 Letter in the Asset Sale Case indicating that the application met the sufficiency requirements as
6 outlined in the Arizona Administrative Code ("A.A.C.").

7 On December 19, 2007, a Procedural Order was issued scheduling a hearing for February 4,
8 2008, in the Asset Sale Case, ordering Kings Ranch to mail notice to property owners and publish
9 notice of the hearing, and establishing other procedural filing dates.

10 On December 21, 2007, Staff filed a Motion to Extend Time to file its Staff Report until
11 February 7, 2008, to change the due dates for intervention and other procedural deadlines, and to
12 reschedule the hearing for March 13, 2008. Staff's Motion indicated that Kings Ranch was agreeable
13 to the requested extension.

14 On December 21, 2007, Staff also filed a Motion to Consolidate the above-captioned dockets,
15 pursuant to A.A.C. R14-3-109(H).

16 By Procedural Order issued January 3, 2008, the above-captioned dockets were consolidated,
17 the hearing in the consolidated cases was rescheduled for March 13, 2008, and other procedural
18 deadlines were established. In addition, Kings Ranch was directed to amend the Notice set forth in
19 the December 19, 2007, Procedural Order to reflect the revised hearing date and procedural schedule,
20 and to mail and publish the Notice in accordance with the prior Procedural Order's directives.

21 On January 28, 2008, Staff filed a letter sent to Mr. Albins requesting responses to several
22 questions related to non-compliance with Arizona Department of Environmental Quality ("ADEQ")
23 requirements. A letter dated January 17, 2008, from ADEQ to Staff, indicated that there were 29
24 items related to Kings Ranch that were not in compliance with ADEQ regulations.

25 On January 29, 2008, the Commission's Hearing Division received from the principals of
26 Kings Ranch (Philip and Jeane Albins) the revised Notice ordered by the December 19, 2007, and
27 January 3, 2008, Procedural Orders. However, the Notice did not contain an affidavit indicating
28 whether Kings Ranch had complied with the mailing and publication requirements contained in the

1 prior Procedural Orders.

2 By Procedural Order issued January 29, 2008, Kings Ranch was directed to comply with the
3 mailing and publication requirements by no later than February 7, 2008 (if it had not already done
4 so), and to file certification of mailing and publication by February 29, 2008.

5 On February 7, 2008, Staff filed its Staff Report recommending approval of the applications
6 subject to resolving all ADEQ compliance issues.

7 On February 26, 2008, the requisite certification of publication was filed with the
8 Commission.

9 A hearing was held, as scheduled, on March 13, 2008, before a duly authorized
10 Administrative Law Judge. Jeane Albins testified on behalf of Kings Ranch and Virginia Gray
11 testified on behalf of the District. The operator of the treatment plant also provided testimony. Staff
12 appeared through counsel, and provided testimony by Robert Gray and Marlin Scott, Jr. No members
13 of the public appeared at the hearing.

14 * * * * *

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes, and orders that:

17 **FINDINGS OF FACT**

18 1. Kings Ranch is a sole proprietorship, owned by Philip and Jeane Albins, engaged in
19 the provision of wastewater utility service to approximately 32 customers in Yavapai County, in an
20 area east of Black Canyon City, Arizona. The Company's CC&N was granted by Decision No.
21 57447 (July 10, 1991).

22 2. The Kings Ranch Unit II wastewater treatment system consists of a Santec extended
23 aeration plant with a nominal capacity of 9,000 gallons per day. Secondary effluent from the plant is
24 disinfected, de-chlorinated, and then discharged into the Agua Fria River. The collection system is
25 comprised of approximately 5,000 feet of mains, a single lift station, 29 manholes, and 5 cleanouts
26 (Ex. S-1, Engineering Report)

27 3. In Kings Ranch's most recent rate case (Decision No. 68655, issued April 12, 2006),
28 the Commission directed Staff to "contact representatives of the Kings Ranch Unit II Treatment Plant

1 and its customers, within 60 days of this Decision, to determine if creation of a wastewater
2 improvement district represents a viable option to current ownership." The Decision further stated
3 that "absent creation of a wastewater improvement district, Kings Ranch Unit II Treatment Plant
4 shall, prior to its next rate case filing, take every possible action to bring its costs under control, while
5 maintaining safe and reliable service." These directives were based on the Commission's concern
6 with the Company's ongoing financial difficulties and revenue losses (Ex. S-1, at 1).

7 4. On November 6, 2006, the Yavapai County Board of Supervisors voted unanimously
8 to approve formation of the Kings Ranch Unit II Domestic Wastewater Improvement District. On
9 December 13, 2006, the Yavapai County Board of Supervisors filed an Order of Establishment for
10 the District.

11 5. On December 8, 2006, the Improvement District Case was opened by the Commission
12 *In the Matter of the Establishment of the Kings Ranch Unit II Domestic Wastewater Improvement*
13 *District* (Docket No. SW-20492A-06-0766).

14 6. On November 6, 2007, Kings Ranch filed in the Asset Sale Case an application for
15 approval to sell its assets to the District and to cancel its CC&N to provide wastewater treatment
16 service (Docket No. SW-02573A-07-0650).

17 7. On December 13, 2007, Kings Ranch filed an Affidavit of Publication in the Asset
18 Sale Case.

19 8. On December 14, 2007, Staff filed a Sufficiency Letter in the Asset Sale Case
20 indicating that the application met the sufficiency requirements as outlined in the Arizona
21 Administrative Code.

22 9. On December 19, 2007, a Procedural Order was issued scheduling a hearing in the
23 Asset Sale Case, ordering Kings Ranch to mail notice to property owners and publish notice of the
24 hearing, and establishing other procedural filing dates.

25 10. On December 21, 2007, Staff filed a Motion to Consolidate the above-captioned
26 dockets, pursuant to A.A.C. R14-3-109(H).

27 11. By Procedural Order issued January 3, 2008, the above-captioned dockets were
28 consolidated, the hearing in the consolidated cases was rescheduled for March 13, 2008, and other

1 procedural deadlines were established. In addition, Kings Ranch was directed to amend the Notice
2 set forth in the December 19, 2007, Procedural Order to reflect the revised hearing date and
3 procedural schedule, and to mail and publish the Notice in accordance with the prior Procedural
4 Order's directives.

5 12. On January 28, 2008, Staff filed a letter sent to Mr. Albins requesting responses to
6 several questions related to non-compliance with ADEQ requirements. A letter dated January 17,
7 2008, from ADEQ to Staff, indicated that there were 29 items related to Kings Ranch that were not in
8 compliance with ADEQ regulations.

9 13. By Procedural Order issued January 29, 2008, Kings Ranch was directed to comply
10 with the mailing and publication requirements by no later than February 7, 2008 (if it had not already
11 done so), and to file certification of mailing and publication by February 29, 2008.

12 14. On February 7, 2008, Staff filed its Staff Report recommending approval of the
13 applications subject to resolving all ADEQ compliance issues.

14 15. On February 26, 2008, the requisite certification of publication was filed with the
15 Commission.

16 16. At the hearing conducted on March 13, 2008, Ms. Albins and Ms. Gray stated that the
17 transaction to transfer ownership of the treatment plant occurred in the summer of 2007, and that the
18 District assumed operational control of the wastewater system on July 1, 2007. The District retained
19 the prior operator of the system, Dale Hernandez, who also testified at the hearing.

20 17. In response to concerns raised by Staff regarding ADEQ compliance, Mr. Hernandez
21 explained that he met at the treatment facility with ADEQ inspector James Jones on February 8,
22 2008, and reconciled the non-compliance issues. Mr. Hernandez stated that the violations cited in the
23 letter to Staff were related to simple mathematical errors involving misplacement of decimal points.
24 He testified that the reports submitted to ADEQ had been calculated using "milligrams per unit"
25 rather than "micrograms per unit," which caused ADEQ to find the plant to be out of compliance.

26 18. On February 14, 2008, ADEQ issued a report stating that the system had no major
27 deficiencies, and that the only minor deficiencies were related to the mathematical errors. The
28 ADEQ report added the following recommendations for the plant operator, but did not specify a

1 deadline for compliance with the recommendations: 1) the plant should have a flow meter¹; 2) the de-
2 chlorinator did not appear to have any tablets at the time of inspection²; and 3) the wet well lift
3 station did not sound "healthy³."

4 19. On behalf of the District, Ms. Gray testified that the members of the District have a
5 significant vested interest in the proper operation of the wastewater system and the members are
6 prepared to take all necessary action to ensure continued compliance with applicable regulations. She
7 stated that the District was budgeting to satisfy the ADEQ recommendations, and that the District
8 was very satisfied with Mr. Hernandez' work as the plant operator. She claims that the transfer of
9 operations to the District has been seamless and members of the District are supportive of the
10 transfer.

11 20. Staff witnesses Robert Gray and Marlin Scott, Jr., testified that approval of the
12 applications is in the public interest. Although Staff initially recommended that approval should be
13 conditioned on compliance with ADEQ non-compliance issues, at the hearing Mr. Gray stated that
14 Staff is now satisfied that the matters cited by ADEQ were related to mathematical errors rather than
15 operational violations. Mr. Scott testified that he discussed the non-compliance issue with the ADEQ
16 inspector, who confirmed that the previously cited violations were rectified by recalculated reports
17 from the operator. Accordingly, Staff recommends approval of the asset transfer, and deletion of the
18 Kings Ranch CC&N, without condition.

19 21. Staff's recommendation for approval of the transfer of assets to the District, and
20 deletion of the Kings Ranch CC&N, is reasonable.

21 CONCLUSIONS OF LAW

22 1. Kings Ranch is a public service corporation within the meaning of Article XV of the
23 Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

24 2. The Commission has jurisdiction over Kings Ranch and the subject matter of the
25 application.

26 ¹ According to the ADEQ report, the flow is currently estimated using a stopwatch and a container.

27 ² District Chairperson Victoria Gray disputed this contention, stating that plant operator, Mr. Hernandez, or one of his
employees, checks the plant on a daily basis to ensure proper operation.

28 ³ Mr. Hernandez testified that the lift station pump is "noisy" and probably needs new bearings, but is still operational at
this time.

- 1 3. Notice of the applications was provided as required by law.
- 2 4. There is a continuing need for wastewater utility service in Kings Ranch's certificated
- 3 area.
- 4 5. The District is a fit and proper entity that is ready, willing and able to assume the
- 5 responsibility of providing wastewater utility service within Kings Ranch's presently certificated
- 6 area.
- 7 6. Staff's recommendation for approval of the applications should be adopted.
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ORDER

IT IS THEREFORE ORDERED that the application of Kings Ranch Unit II Treatment Plant to sell its assets to the Kings Ranch Unit II Domestic Wastewater Improvement District and to cancel its Certificate of Convenience and Necessity is hereby approved.

IT IS FURTHER ORDERED that Kings Ranch Unit II Treatment Plant shall file within 30 days of the effective date of this Decision, as a compliance item in this docket, documentation showing completion of the sale and transfer of assets to the Kings Ranch Unit II Domestic Wastewater Improvement District.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

Lawrence S. Pearson
CHAIRMAN

William A. Miller
COMMISSIONER

Jeffrey H. Hetch-Miller
COMMISSIONER

R. M. [Signature]
COMMISSIONER

Gary [Signature]
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. MCNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of April, 2008.

[Signature]
BRIAN C. MCNEIL
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

DDN:db

1 SERVICE LIST FOR:

KINGS RANCH UNIT II TREATMENT PLANT and
KINGS RANCH UNIT II DOMESTIC
WASTEWATER IMPROVEMENT DISTRICT

3 DOCKET NOS.:

SW-02573A-07-0650 and SW-20492A-06-0766

4 Philip and Jeane Albins

5 KINGS RANCH UNIT II TREATMENT PLANT

P.O. Box 109

6 Black Canyon City, Arizona 85324

7 Virginia Gray, Chairperson

KINGS RANCH UNIT II WASTEWATER

8 IMPROVEMENT DISTRICT

P.O. Box 1555

9 Black Canyon City, Arizona 85324

10 Christopher Kempley, Chief Counsel

Legal Division

11 ARIZONA CORPORATION COMMISSION

1200 West Washington Street

12 Phoenix, Arizona 85007

13 Ernest G. Johnson, Director

Utilities Division

14 ARIZONA CORPORATION COMMISSION

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15 Phoenix, Arizona 85007